

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	79159896
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 116
<b>MARK SECTION</b>	
<b>MARK FILE NAME</b>	http://tmng-al.uspto.gov/resting2/api/img/79159896/large
<b>LITERAL ELEMENT</b>	INVESDOR
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_7110016956-20160301173008219561 . INVESDOR Request for reconsideration.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (7 pages)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\791\598\79159896\xml11\RFR0002.JPG</a>
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<b>DESCRIPTION OF EVIDENCE FILE</b>	Arguments
<b>GOODS AND/OR SERVICES SECTION (009)(no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (035)(no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (036)(current)</b>	
<b>INTERNATIONAL CLASS</b>	036
<b>DESCRIPTION</b>	
Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; all the aforesaid services exclude real estate investment	
<b>GOODS AND/OR SERVICES SECTION (036)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	036

<b>TRACKED TEXT DESCRIPTION</b>	
Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; <del>all the aforesaid services exclude real estate investment</del> ; <a href="#">all the aforesaid services limited to business fundraising services and exclude real estate investment</a>	
<b>FINAL DESCRIPTION</b>	
Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; all the aforesaid services limited to business fundraising services and exclude real estate investment	
<b>GOODS AND/OR SERVICES SECTION (041)(current)</b>	
<b>INTERNATIONAL CLASS</b>	041
<b>DESCRIPTION</b>	
Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; all the aforesaid services exclude real estate investment	
<b>GOODS AND/OR SERVICES SECTION (041)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	041
<b>TRACKED TEXT DESCRIPTION</b>	
Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; <del>all the aforesaid services exclude real estate investment</del> ; <a href="#">all the aforesaid services limited to business fundraising services and exclude real estate investment</a>	
<b>FINAL DESCRIPTION</b>	
Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; all the aforesaid services limited to business fundraising services and exclude real estate investment	
<b>GOODS AND/OR SERVICES SECTION (042)(no change)</b>	
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/asl/
<b>SIGNATORY'S NAME</b>	Alexander Lazouski
<b>SIGNATORY'S POSITION</b>	Attorney of record, New York bar member
<b>SIGNATORY'S PHONE NUMBER</b>	2016455616
<b>DATE SIGNED</b>	03/01/2016
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Tue Mar 01 17:36:48 EST 2016
	USPTO/RFR-XX.XXX.XXX.XX-2 0160301173648306878-79159

TEAS STAMP

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

## Request for Reconsideration after Final Action

### To the Commissioner for Trademarks:

Application serial no. **79159896** INVESDOR (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/79159896/large>) has been amended as follows:

#### EVIDENCE

Evidence in the nature of Arguments has been attached.

#### Original PDF file:

[evi\\_7110016956-20160301173008219561\\_.INVESDOR.Request.for.reconsideration.pdf](#)

#### Converted PDF file(s) ( 7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

#### CLASSIFICATION AND LISTING OF GOODS/SERVICES

##### Applicant proposes to amend the following class of goods/services in the application:

**Current:** Class 036 for Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; all the aforesaid services exclude real estate investment

Original Filing Basis:

**Filing Basis Section 66(a)** , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

#### Proposed:

**Tracked Text Description:** Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; ~~all the aforesaid services exclude real estate investment~~; [all the aforesaid services limited to business fundraising services and exclude real estate investment](#)

Class 036 for Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing

financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; all the aforesaid services limited to business fundraising services and exclude real estate investment

**Filing Basis Section 66(a)** , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 041 for Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; all the aforesaid services exclude real estate investment

Original Filing Basis:

**Filing Basis Section 66(a)** , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

**Proposed:**

**Tracked Text Description:** Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; ~~all the aforesaid services exclude real estate investment~~; all the aforesaid services limited to business fundraising services and exclude real estate investment

Class 041 for Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; all the aforesaid services limited to business fundraising services and exclude real estate investment

**Filing Basis Section 66(a)** , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /as/ Date: 03/01/2016

Signatory's Name: Alexander Lazouski

Signatory's Position: Attorney of record, New York bar member

Signatory's Phone Number: 2016455616

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79159896

Internet Transmission Date: Tue Mar 01 17:36:48 EST 2016

TEAS Stamp: USPTO/RFR-XX.XXX.XXX.XX-2016030117364830

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68e48eede1a8155ae38c6c3e8c85c99623c97f1-

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Applicant: Invesdor Oy  
Mark: INVESDOR  
Serial No. 79159896

### OFFICE ACTION RESPONSE

In the Office Action, the Examining Attorney initially refused registration of Applicant's mark based on an alleged likelihood of confusion as a barrier to registration with Registration No. 3227713 for the following mark



in class 36 for "*real estate investment*".

Applicant respectfully disagrees. Applicant also informs that it filed a Notice of Appeal in conjunction with this Request for Reconsideration.


#### **Difference in the Marks**

The Examining Attorney concluded that INVESDOR create overall commercial impression of an "investment door", or "door to investment" opportunity, which the same as the impression of the cited mark. Applicant respectfully disagrees.

First, INVESDOR is not a phonetic equivalent of INVESTDOOR because, as shown

below, “dor” means “pain” and “door” means “swinging barrier by which an entrance (as into a house) is closed and opened”. Therefore, the marks have different meanings.

Specifically, as stated in the prior response Applicant offers online investment matching service where entrepreneurs connect with investors who are seeking to discover and invest in exciting growth companies. Specifically, Applicant’s mark INVESDOR is a clever play of the terms “investor” and a Spanish term “dor” which means “pain”. Therefore, Applicant’s mark INVESDOR refers to a painful process of funding a business venture and finding the rights investment for the project. On the opposite, Registrant’s mark INVESDOOR OPPORTUNITY KNOCKS & Design clearly is a play with the terms “investor” and “door” (based on the phrase “opportunity knocks” and a design of a house) and is expressly limited to real estate investment services. Obviously, the cited mark does not have the same connotation when applied to online investment matching service as Applicant’s mark and visa versa. On the opposite, both marks suggest **different meanings** (a painful process of finding an investor vs. an opportunity actively approaching or “knocks on your door”). Therefore, the meaning or connotation of both marks in relation to the named services are entirely different.

Further, the Examining Attorney also concluded that the letter “O” in the term “dor” in the applicant’s proposed mark features a dot resembling a doorknob. This is incorrect. Applicant never intended for the letter “O” to resemble a doorknob. Applicant asserts that  in Applicant’s mark clearly looks like a bull’s eye of a target and suggests that users of Applicant’s

crowdfunding platform will “hit the bull’s-eye” or achieve the goal perfectly. Nothing in the cited mark suggests the same meaning.

Therefore, considering the visual differences in the marks, differences in meanings and overall commercial impression between the marks, Applicant asserts that confusion is unlikely.

### **Services are Not Related**

As the initial matter, Applicant specified the identification of services in classes 36 and 41 as follows:

Class 36: Financial investment brokerage services, namely, providing financial information via a website for both entrepreneurs and investors; providing financial information via a website regarding crowdfunding and fundraising for the purpose of purchasing companies; financial affairs and monetary affairs, namely, financial information, management and analysis services, financial services, namely, business fundraising for others; crowdfunding services in the nature of providing financing from money collected from individuals, crowdfunding services in the nature of providing financing from money collected from individuals for the purpose of purchasing shares; financing services; providing financial information via an interactive website in the field of business fundraising; information, consultancy and advisory services all relating to the aforesaid; providing financial information, namely, providing information about financial investment and funding for said investments via a website; all the aforesaid services **limited to business fundraising services and** exclude real estate investment

Class 41: Education, namely, conducting classes, workshops, seminars and conferences all in the field of financial management, financial management consultancy training; all the aforesaid services **limited to business fundraising services and** exclude real estate investment

In order to support her position that both parties’ services are related, the Examining Attorney submitted information about 29 marks registered for financial services and real estate and several website extracts from parties which presumably financial services and real estate services under the same mark.

First, third party registrations “are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them“ In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). As stated in TMEP Section 1207.01(d)(iii), third party registrations have fairly limited use as such evidence may have, at most, “*some probative value*” (citation omitted). See In re Princeton Tectonics, Inc., 95 USPQ2d 1509, 1511 (TTAB 2010) which states that “...examining attorneys must review the registrations carefully to ensure that each registration presented is probative and that the number of registrations is sufficient, **along with other types of evidence**, to establish that the types of goods at issue are related.” (citation omitted, bold font added). Without such evidence the submitted certificates have extremely low (if any at all) probative value in this case.

“Other types of evidence” requirement has not been met because the Examining Attorney did not provide any other type of evidence, which proves that business fundraising platform for creative ideas and real estate investment services are related or that customers are accustomed to see such services offered under the same mark. In other words, no one thinks that Kickstarter or other funding platforms would offer traditional real estate investment services; or that RE/MAX and other traditional real estate agencies would offer fundraising services for creative projects outside of real estate field. Such evidence is extremely hard to find (if possible at all) because such services are different in nature, not complimentary or usually offered together by the same entity. This speaks strongly against likelihood of confusion.

#### **The Relevant Purchasers Are Highly Sophisticated**



The Examining Attorney did not present any evidence of arguments except for the general statement that “the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion.”

As noted in the prior response, the degree of purchaser care weighs heavily in favor of no likelihood of confusion. In the instant case, the purchasing environment surrounding purchasers of the parties’ goods. See DuPont, 476 F.2d at 1361 (the fourth DuPont factor considers whether buyers are likely to purchase products on impulse or through “careful, sophisticated purchasing”); see also McCarthy on Trademarks and Unfair Competition, §23:101 (4th ed. 2010) (“Where the relevant buyer class is composed solely of professional, or commercial purchasers, it is reasonable to set a higher standard of care than exists for consumers”). The more sophisticated a customer is, the less likely that he or she will be confused as to the source of a product. See Palm Bay Imports v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369 (Fed. Cir. 2005); Electronic Design & Sales v. E.D.S., 954 F.2d 713, 718 (Fed. Cir. 1992).

The Examining Attorney also erred by failing to account for the exceptionally high sophistication of consumers to which Applicant's or Registrant’s services are offered. Applicant's services are marketed to high net worth intuitions and individuals (Applicant’s customers) or parties looking to invest in real estate (Registrant’s customers). In any case, we are not dealing here with an individual with a few dollars to spend. Thus, the Examining Attorney has ignored this crucial inquiry: the extent to which the knowledge of and care exercised by highly sophisticated consumers reduces the likelihood of source confusion. See, Bridger Management,

LLC, Ser. No. 78/516349, 2007 WL 4663351 (T.T.A.B. 2007). Applicant's services are not offered to real estate investors per se and certainly not in the same context of the cited mark.

Even when marks are closely similar, the sophistication of the relevant purchasers of the goods or services offered must be considered as part of a likelihood of confusion analysis. See In re Software Design, Inc., 220 U.S.P.Q. 662 (T.T.A.B. 1983) ("they are . . . relatively expensive services, which are likely to be purchased only with care and deliberation after investigation . . . and under these circumstances, the phonetic similarity between the marks is not as significant as it would be if the marks were used, for example, to identify inexpensive, over the counter items"). The TTAB has held that it is necessary to consider that certain purchasing decisions are not "apt to be made impulsively or carelessly, as would be the case of a child purchasing candy or a toy." See The Stouffer Corp. v. Health Valley Natural Foods, Inc., 1 U.S.P.Q.2d 1900, 1987 TTAB LEXIS 89 at \*6 (T.T.A.B. 1987) aff'd, 831 F.2d 306, 1987 WL 44470 (Fed. Cir. 1987). The services here are not apt to be purchased impulsively.

Applicant's services are online investment matching services for investors (a very conservative and highly sophisticated category) to discover and invest in exciting growth companies. As noted above, Applicant's customers are very small and sophisticated group.

No reasonable consumer, regardless of wealth, is likely to invest millions of dollars without detailed knowledge regarding the entity managing that investment. See, Bridger Management, LLC, Ser. No. 78/516349, 2007 WL 4663351 (T.T.A.B. 2007). Moreover, institutional investors (real estate investors, like Registrant's customers, and venture investors, like Applicant's customers) typically perform extensive due diligence review prior to retaining a provider of services such as those offered by the Applicant or Registrant. It is exceedingly improbable that any customer will engage the Applicant due to a mistaken belief that it is

associated with Registrant. Even general banking consumers are recognized to exercise a high degree of care in selecting everyday consumer banking services. See, e.g., In re Community Trust Bank, U.S. Ser. No. 76/685,026 (T.T.A.B. September 25, 2009). There is virtually no chance that Registrant's customers will mistakenly associate Registrant with the Applicant, let alone act in reliance on such an error.

### **Conclusion**

Therefore, 1) differences in the marks, 2) difference in the services, 3) high degree of purchaser's care and 4) weakness of the cited mark does not support the conclusion that the confusion as to the source of the goods is likely.

Applicant respectfully requests withdrawal of the refusal to register based on likelihood of confusion. Inasmuch as all outstanding issues have been resolved, Applicant submits that the mark is in condition for publication. Please direct any questions regarding this response to the undersigned attorney for Applicant.

Respectfully submitted,



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201-645-5616